

You can also learn more about the **MyConstitution Campaign** or follow it on:

- www.perlembagaanKu.com
- www.malaysianbar.org.my/constitutional_law_committee
- www.facebook.com/MyConstitution
- www.twitter.com/MyConsti
- www.youtube.com/user/PerlembagaanKu

We can be reached at:
Constitutional Law Committee
Bar Council Secretariat
No. 15, Leboh Pasar Besar
50050 Kuala Lumpur



t: 03.2031.3003
f: 03.2026.1313
e: perlembagaanKu@gmail.com

September 2010



Bar Council



MyConstitution Campaign
Constitutional Law Committee

ISBN 978-967-5969-04-1



9 789675 969041 >

policies and spending of the State Government. The elected representatives in the DUN are called State Assemblymen.

The State Government or 'Executive' is made up of the Chief Minister and his Cabinet of Ministers who are appointed by the Chief Minister. The Chief Minister may also appoint Assistant Ministers. Each Minister and his or her Assistant are responsible for their own Ministry.



What laws can the State Legislative Assemblies of Sabah and Sarawak make?

The State Legislative Assemblies of Sabah and Sarawak can make laws on matters set out in the 'State List' and the 'Concurrent List' of the Constitution. The State Legislative Assemblies of Sabah and Sarawak can make laws on more matters than the State Legislative Assemblies of the other States in Malaysia. We discuss the State List and the Concurrent List in The Rakyat Guides: 3. Federal-State Relations.

Examples of the matters that the State Legislative Assemblies of Sabah and Sarawak can make laws on are the administration of lands in Sabah and Sarawak, employment and labour, forests, immigration, merchant shipping and fisheries.

Frequently Asked Questions

1. Why do some Malaysians have to fill in Immigration Forms when entering Sabah and Sarawak?



Sabah and Sarawak have the power to control who can enter their borders to ensure that only people who can contribute positively to the growth of the

State and are not deemed a threat to law and order are allowed to enter and reside in the States.

2. Do Malaysians from other States need to produce passports or apply for visas when entering Sabah and Sarawak?

No, Malaysians from other States only need to produce their national identity cards and will be granted visit passes when entering Sabah and Sarawak.

3. Aren't these immigration laws a restriction on a Malaysian citizen's right to free movement within the country?

Although the Constitution gives Malaysians the right to move freely within Malaysia and to reside in any part of Malaysia, the Constitution also restricts this right when it involves Sabah and Sarawak. This is part of the special interests and safeguards granted to Sabah and Sarawak when they joined Malaysia in 1963.

4. Can a person from another State work in Sabah or Sarawak?

While there is no law that prevents a person from another State from working in Sabah or Sarawak, the Governments of Sabah and Sarawak can control who can enter and reside in those States. So to work in Sabah or Sarawak, a person from another State will still have to get permission to enter and reside in Sabah or Sarawak from that State's authorities.

5. Why is English still the language used in the State Legislative Assemblies and Courts in Sabah and Sarawak?

English was the official language of the State Legislative Assemblies and Courts in Sabah and Sarawak on Malaysia Day, 16 September 1963. Any

change of the official language to Bahasa Melayu can only become effective when the State Legislative Assembly of Sabah or Sarawak agrees to adopt federal laws that make Bahasa Melayu the official language.

6. Has the Federal Government ever taken over the powers of the State Government in Sabah or Sarawak?

Yes, in 1966 the YDPN of Sarawak tried to dismiss the Chief Minister at the time, Stephen Kalong Ningkan. However, the Federal Court held that the dismissal was unconstitutional and invalid as it did not follow the Sarawak State Constitution. Following this, the Yang di-Pertuan Agong declared a Proclamation of Emergency under Article 150 of the Federal Constitution.

This enabled the Federal Government to pass the Emergency (Federal Constitution and Constitution of Sarawak) Act 1966 which gave the YDPN the power to dismiss the Chief Minister even though it went against the Sarawak State Constitution.

7. Why do Sabah and Sarawak enjoy greater powers than the States in West Malaysia?

The culture and religious faiths of Sabah and Sarawak are different from West Malaysia. The States of Sabah and Sarawak combined are bigger than West Malaysia. Sabah and Sarawak are rich in natural resources like forests, rivers and petroleum. Sabah and Sarawak wanted to maintain greater independence and control over the matters and resources in their States and their way of life when they joined Malaysia. This is why they have special protections in the Constitution and greater powers than the States in West Malaysia.

What's Next?

Learn about your Constitution in our other Rakyat Guides on What is the Federal Constitution?, Constitutional Institutions & the Separation of Powers, Federal-State Relations, Parliament, the Executive, the Judiciary, the Rakyat and Elections & Democracy!



The Rakyat Guides
7. Sabah & Sarawak





How did Sabah & Sarawak become part of Malaysia?

To understand how Sabah and Sarawak became part of Malaysia in 1963, it is important to know their history. Sarawak was ruled by the dynasty of Rajah Sir James Brooke for over 100 years, while Sabah was ruled by the Sultan of Sulu and the British North Borneo Chartered Company, before both states became Crown Colonies under the British Empire after the Second World War.

When the Federation of Malaya became independent in 1957, the people of both Sabah and Sarawak started discussing the independence of their States. The question of Sabah and Sarawak forming a federation with other countries led to the creation of a Commission led by Lord Cobbold, to find out the true wishes of the people of both Sabah and Sarawak.

After speaking to many people and groups, the Commission reported that the majority of the people of Sabah and Sarawak would agree to form a federation with Malaya, if there were special safeguards to protect their interests. An Inter-Governmental Committee was then set up consisting of representatives of the Malayan Government, the British Government, Sabah and Sarawak to draw up the special safeguards for Sabah and Sarawak.

In July 1963, the "Malaysia Agreement" was signed in London by the British and Malayan Governments, Sarawak, Sabah and other parties (including Singapore) for the formation of Malaysia, and the agreement included the special interests and safeguards for Sabah and Sarawak which were recommended by the Inter-Governmental Committee.

The Malayan Parliament then made changes to the 1957 Constitution to make it a Federal Constitution for

Malaysia, and the special interests and safeguards for Sabah and Sarawak were included in the Constitution.

On 16 September 1963, Malaysia was born.

What are these special interests and safeguards for Sabah and Sarawak?



These are the special interests and safeguards for Sabah and Sarawak:-

- Sabah and Sarawak can control the entry and residence of non-Sabahans and non-Sarawakians into the two States.
- Only lawyers who are residents in Sabah or Sarawak or have satisfied the residential requirements of Sabah and Sarawak can practise law in Sabah and Sarawak.
- Sabah and Sarawak have a separate High Court called the High Court in Sabah and Sarawak which has jurisdiction over Sabah and Sarawak.
- The Chief Ministers of Sabah and Sarawak must be consulted on who to appoint as Chief Judge of the High Court in Sabah and Sarawak.
- Besides Syariah Courts, there is a system of Native Courts in Sabah and Sarawak.
- Sabah and Sarawak have sources of revenue and special grants of money from the Federal Government that other States in Malaysia do not have, and they can also charge their own State sales tax.
- The Legislative Assemblies of Sabah and Sarawak have the power to make laws on additional matters

which the Legislative Assemblies of the other States do not have the power to do, and these matters include native law and custom; water supplies and services; personal laws relating to marriage, divorce, guardianship and adoption; distribution and supply of water power and electricity generated by water power and some shipping matters.

- Parliament has the power to pass laws on some matters in the State List to make sure that laws on that matter are the same in all the States in West Malaysia. However, Parliament's power to do this does not extend to Sabah and Sarawak. You can learn about the State List in The Rakyat Guides: 3. Federal-State Relations.
- Parliament also has the power to pass laws on matters in the State List to give effect to a National Development Plan, but if it involves the States of Sabah or Sarawak, the consent of the Yang di-Pertua Negeri (YDPN) of that State must be obtained. You can learn about the National Development Plan in The Rakyat Guides: 3. Federal-State Relations.
- Sabah and Sarawak can also raise loans for their purposes with the consent of Bank Negara Malaysia.
- The natives of Sabah and Sarawak enjoy special interests such as quotas for employment in the public service, scholarships, places in public educational institutions and business permits or licences.
- Sabah and Sarawak can use the English language as their official language, and the native languages of the natives of Sabah and Sarawak in the Native Courts or for any native law and custom.

How are these special interests protected under our Federal Constitution?



The Constitution says that before any changes can be made to any of these special interests and safeguards, at least two thirds of the members of the *Dewan Rakyat* and *Dewan Negara* in Parliament must agree and the YDPNs of both Sabah and Sarawak (who must follow the advice of the States' Cabinet) must consent to it.

At least two-thirds of the *Dewan Rakyat* and *Dewan Negara* in Parliament must also agree and the YDPNs of Sabah and Sarawak must also consent before changes can be made to any of these matters:-

- the right of Sarawakians or Sabahans to equal treatment with other Malaysian citizens born or resident in any of the States of Malaysia;
- the appointment, suspension and removal of judges of the High Court in Sabah and Sarawak and the jurisdiction of the Court;
- the Sabah and Sarawak State Legislative Assemblies' powers to make laws and their State Governments' powers to govern according to those laws, as well as the financial arrangements between the two States and the Federal Government;
- religion, the use of any particular language whether in the State Legislative Assemblies of Sabah or Sarawak or in Parliament, and the special treatment for natives of Sabah and Sarawak;
- immigration powers given to Sabah and Sarawak to control the right of entry and residence in the States and matters connected to it.

Do Sabah and Sarawak have other special interests that are not in the Constitution?



Part VII of the Immigration Act 1959/1963 says that anyone who does not belong to Sabah and Sarawak must have a valid Permit or Pass to enter Sabah or Sarawak except for members of the Federal Government, judges, public servants or a person entering for the sole purpose of engaging in legitimate political activity.

Apart from this, there are certain federal laws that are not followed in Sabah and Sarawak, like the Local Government Act 1976, the National Land Code and the Employment Act 1955. Sabah and Sarawak have made their own laws on these matters.



For how long are these special interests to be safeguarded?

For as long as the people of Sabah and Sarawak feel these special interests are still needed by them. These special interests are a protection that the people of Sabah and Sarawak requested as a condition for joining Malaysia in 1963.

The consent of the YDPNs must be obtained before any of these special interests can be removed, and the YDPNs must follow the advice of the States' Cabinet. The Ministers in the States' Cabinets are appointed from members of the State Legislative Assemblies of Sabah and Sarawak, who are elected by the people of Sabah and Sarawak.

This means that it is for the people of Sabah and Sarawak to decide through their elected representatives in the State Legislative Assemblies whether any of their special interests should be removed.

Additional sources of revenue for Sabah & Sarawak that the other States do not have



The Constitution also provides special grants and additional sources of revenue for Sabah and Sarawak that the other States in Malaysia do not have.

For example, the Federal Government issues yearly special grants to Sabah and Sarawak for the costs of the States' services and administration. These special grants are to be reviewed every five years or longer (if the Federal Government and the State agree).

Sabah and Sarawak also receive revenue from lands, mines and forests, entertainment duty, fees for specific services provided by the state departments, revenue from local authorities and from water supply. In addition, Sabah and Sarawak are also allowed to charge import and excise duties on petroleum products, export duty on timber and forest produce, sales tax and fees from ports and harbours.



What is the structure of the State Governments of Sabah & Sarawak?

In both States, the Head of State or YDPN is the Governor whose title is Tuan Yang Terutama (TYT). The TYT is appointed by the Yang di-Pertuan Agong.

The TYT appoints the Chief Minister as head of the States' executive branch. The post of the Chief Minister is normally filled by the leader of the party that has the most representatives in the State Legislative Assembly or *Dewan Undangan Negeri (DUN)*.

The DUN passes all State laws that do not come under the jurisdiction of Parliament and oversees the